IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 2-2-2007

Coram

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Appeal No.3570 of 2003

The Management of Institute of
Road Transport Technology, Erode. ... Appellant

Vs.

1. S.Arumugam
2. K.Dharmalingam
3. P. Jayaraman
4. R. Matheeswaran
5. A. Alagarasan
6. The Presiding Officer,
Labour Court, Salem. ... Respondents

Writ appeal filed under Clause 15 of the Letters Patent against the order of the learned single Judge dated 29.7.2003 inW.P.No.6465 of 1998 filed under Article 226 of the Constitution of India to issue a writ of certiorarified Mandamus calling for the records from the Respondent relating to I.D.Nos.172/94, 71/95, 73/95, 75/95, 34/96, dated 23.8.1996 and quash the same and direct the 2nd respondent to reinstate the petitioners with continuity of service backwages and all other attendant benefits and award costs.

For Appellant : Ms. Kala Ramesh
for Mr.L.G.Sahadevan
For Respondents 1 to 5 : Mr.D.Hariparanthaman

J U D G M E N T

WEB COPY

N. PAUL VASANTHAKUMAR, J.

This writ appeal is directed against the order in W.P.No.6465 of 1998 dated 29.7.2003 allowing the writ petition filed by the workmen, by setting aside the award of the Labour Court.

2. The brief facts necessary for disposal of the writ appeal are as follows.

https://hcservices.ecourts.gov.in/hcservices/

(a) Respondents 1 to 5 herein along with 15 other persons were employed in the appellant management as Security Guards. The appellant is a Engineering College at Erode, established by the Transport Corporation fully owned by the Government of Tamil Nadu.

(b) According to the respondents 1 to 5, they have to do shift duties and initially they were paid Rs.20/- per shift, which was later on increased to Rs.25/- per shift and thereafter to Rs.30/- per shift. The wages were calculated and paid by the appellant management directly, depending on the number of shifts in which each Security Guard worked.

(c) The case of the respondents 1 to 5 is that at a later point of time, the appellant created documents to show that the Security duty was entrusted to the contractors and one of the Workmen was treated as Contractor, but in fact, the Workmen were appointed by the appellant and the contract was a mere sham and not genuine.

(d) The respondents were allotted work by the Assistant Security Officer of the appellant, whose designation was later on changed as Junior Security Officer. The said Officers sign the work allotment register and the workmen also have to sign the register in the signature column. If a workman is posted as Security Guard in first shift of the day, he would be posted in the third shift on the next day and on the third day he will be posted in the second shift. If one security guard is on leave, the Assistant Security Officer or Junior Security Officer would direct another Security Guard to do extra work and the same would be recorded by the said Officer in the said work allocation register. Sometimes, one workman would be compelled to work for more than 16 hours per day, which is contrary to the statutory rules of 8 hours work per day. The workmen were also not given weekly off and they were also not given festival holidays and if a person works on extra shift, he was given one attendance and no over time payment was made.

(e) It is also stated that artificial breaks were given at the instructions of the Principal and even though the workmen were treated as daily rated workmen, wages were paid once in a month and their services were not regularised even though the workmen have put in 5 to 7 years of service and the work is perennial in nature. The grievance of the workmen is that due to the non-regularisation, they were denied basic wages, dearness allowance and other allowances. Some security guards of the then Jeeva Transport Corporation were posted on deputation for some time and they were paid the basic wages apart from dearness allowances.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(f) It is the further case of the workmen that in view of the above said denial of benefits, the Security Guards formed a Trade Union with registration No.32/94 and after knowing the same, i.e., formation of Trade Union, the appellant started victimising the workmen and thereafter denied employment and also gave artificial breaks until further orders. The same was objected through the legal advisor of the Trade Union. The Union made a representation on 5.7.1994 to the Inspector of Factories, Erode, and requested him to take action for regularising the services. The workmen, who were not the members of the Union continued in service. Therefore the matter was brought to the notice of the Labour Officer, Erode, wherein the management filed counter affidavit and contended that the respondents 1 to 5 are not employees of the Management and were the employees of the contractors and that there is no master and servant relationship between the security guards and the appellant management and therefore the conciliatory efforts failed. Thereafter, the respondents 1 to 5 raised separate Industrial Disputes in I.D.Nos.172/1994, 71/1995, 73/1995, 75/1995 and 34/1996 respectively under Sections 2-A(2) of the Industrial Disputes Act, 1947 before the Labour Court, Salem.

3. The appellant/management filed counter affidavit stating that the respondents 1 to 5 are not its workmen and they are employed by the contractors.

4. Two successive principals of the appellant/management were examined as MWs-1 and 2. First respondent was examined on the side of the workmen. Documents were also marked. The Labour Court on analysis of the evidence and documents placed before it, dismissed the claim made by the respondents 1 to 5 by a common award dated 23.8.1996. The said award was challenged before the learned single Judge of this Court, raising various grounds.

5. The appellant filed counter affidavit in the writ petition also and reiterated the contentions raised before the Labour Court stating that the respondents 1 to 5 were appointed by the contractors and there is no master and servant relationship between the appellant and the respondents 1 to 5 and therefore the award of the Labour Court is proper and the writ petition is liable to be dismissed. The learned single Judge allowed the writ petition partly and set aside the award of the Labour Court.

6. We have heard the learned counsel appearing for the appellant as well as respondents 1 to 5 and perused the award of the Labour Court, documents filed and the order of the learned single Judge.

7. The learned single Judge, not satisfied with the award of the Labour Court, thought fit to go into the merits of the case

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

independently. The learned single Judge after perusing the documents found that the respondents 1 to 5 and other workmen were originally appointed by the appellant and thereafter contracts were made every month with one or two persons agreeing to employ such persons and calling upon such persons to engage few others. In subsequent months, similar contracts in cyclo-styled forms were executed between the management and some other persons. It is also found that a person who was being engaged by his contractor as workman for few months, would suddenly become a contractor for the subsequent months. The very same persons were being engaged as Security Guards and documents were being executed to give colour as if the persons were engaged through the contractor.

8. It is also found by the learned single Judge that the documents on record as well as the evidence of the two management witnesses clearly indicate that directions were being given through a Supervisor regarding the duty of such persons and on some occasions, those persons were discontinued for few days on the basis of the directions of the authorities. The said aspect clearly indicate that control is being exercised by the management. The said practice of entrusting the work to the contractor was suddenly introduced in the year 1991-1992. The learned single Judge also found that the contracts were sham transactions and there were actual ultimate relationship of employer and employee between the appellant and the workmen and non-pleading of the case before the Labour Court that the contracts were sham transactions, is due to non-drafting of the papers by the Lawyer, but because of the poor drafting by the workmen or by some other person.

9. It was the specific case before the Labour Court that the workmen were directly appointed under the appellant. The learned Judge after going through the records, gave a specific finding that the contracts were sham transactions and the Labour Court failed to advert to the said aspect and hence the award of the Labour Court is vitiated. The learned single Judge, on the facts of the case thought fit to shorten the litigation and taking into consideration the long pendency of the matter, did not remand the matter back to the Labour Court. The learned single Judge also pointed out that the oral evidence indicate that some amount of control was being exercised over the Security Guards by the Management.

10. It is also found from the records that the workmen were directly engaged by the management originally and subsequently, the so called contracts were executed to show as if the persons were engaged through some contractors and found that the respondents 1 to 5 were workmen under the appellant College and the so called contractor was a mere eye wash. Thus a specific and categorical finding was given by the learned single Judge after scrutiny of the records that the respondents 1 to 5 have been directly engaged and

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

subsequently disengaged without following the provisions contained in section 25-F of the Industrial Disputes Act, 1947. The learned Judge also took note of the fact that the appellant College is being managed by a Society and running certain Educational Institutions and held that the respondents 1 to 5 are not entitled to get backwages, which was also agreed to by the respondents while ordering reinstatement. Thus, the learned single Judge confirmed the award of the Labour Court insofar as payment of ex-gratia of Rs.5,000/- to other workmen and set aside other portion of the award.

11. The power of the High Court to go into the validity of the award of the Labour Court is well settled in various decisions.

(a) In the decision reported in 1980-I LLJ 137 (Gujarat Steel Tubes Ltd. v. G.S.T.Mazdoor Sabha), in para 73, the Honourable Supreme Court held thus,

> "73. Once we assume that the jurisdiction of the Arbitrator to enquire into the alleged misconduct was exercised, was there any ground under Art.226 of the Constitution to demolish that holding ? Every wrong order cannot be righted merely because it is wrong. It can be quashed only if it is vitiated by the fundamental flaws of gross miscarriage of justice, absence of legal evidence, perverse misreading of facts, serious errors of law on the face of the order, jurisdictional failure and the like."

(b) The same was the view taken in the decision reported in (1982) 1 SCC 143 (J.D.Jain v. Management of State Bank of India), wherein in para 11 the Honourable Supreme Court held as follows,

> "11. In an application for a writ of certiorari under Article 226 of the Constitution for quashing an award of an Industrial Tribunal, the jurisdiction of the High Court is limited. It can quash the award, inter alia, when the Tribunal has committed an error of law apparent on the face of the record or when the finding of facts of the Tribunal is perverse. ....."

(c) In the decision reported in (2005) 3 SCC 193 (Madurantakam Coop. Sugar Mills Ltd. v. S. Viswanathan)

> "12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these types of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. ...."

(d) A Full Bench of the Rajasthan High Court in the decision reported in 1998 (3) LLN 549 (R.S.R.T. Corporation v. Gopal Singh), in para 29(c) held as follows,

"29 (c) On the third question referred to as to whether this Court in exercise of supervisory writ jurisdiction under Arts.226 and 227 of the Constitution where a petition is filed seeking a relief by way of quashing of award given by the Labour Court, Tribunal or National Tribunal under S.11A of the Industrial Disputes Act has limited jurisdiction to demolish the impugned award or not where according to the High Court such award is palpably erroneous and whether in such case it can substitute its own order in place of one made by such Labour Court, Tribunal or National Tribunal, the law is indeed clear. As a general rule, the High Court would not interfere unless the order of the Labour Court, Tribunal or National Tribunal is perverse or not based on any evidence or grossly illegal or based on a complete misconception of law or that no reasonable man would come to the conclusion to which the Labour Court, Tribunal or National Tribunal has arrived at. There is no hard and fast rule that it has always to send the matter back to the Labour Court, Tribunal or National Tribunal for appropriate adjudication and for passing appropriate punishment in accordance with law, but in order to avoid delayed justice and for vindication of speedy and appropriate relief, the High Court may in some cases incorporate its own findings which it may appear to be just and proper but that should not be followed as a general rule but more as an exception."

(e) A Division Bench of this Court in the decision reported in 1990-I LLJ 298 (Management of M.F.L. v. Presiding Officer, I Additional Labour Court, Madras and others) in para 6 held as follows,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"6. The second point urged by Mr.Sanjay Mohan, learned counsel for the management, is that the learned single Judge, while exercising writ jurisdiction, ought not to have interfered with the discretion exercised by the Labour Court under Section 11-A of the Act and exercised that discretion himself. This is an erroneous thinking about the powers of this Court in writ jurisdiction. What the Labour Court should do and when there is an omission on the part of it to do that, this Court, in exercise of the powers under Article 226 of the Constitution of India, can certainly do. This is a proposition which has been countenanced by pronouncements of Courts, including of the highest in the land. In Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha (1980-I LLJ 137) the Supreme Court did countenance the proposition that what the Labour Court may in its discretion do, the High Court too can, under Article 226, if facts compel it to do so. In Vasanti M.Shab v. All India Handloom Fabrics Co-Operative Society Ltd (1986-I-LLJ 69), a Bench of the High Court of Gujarat was inclined to consider the relevant facts for the purpose of finding out the propriety of the punishment, even though the Labour Court has not done so. This position has been taken note of by one of us (Nainar Sundaram, J.) in National Carbon Company, Madras v. Labour Court, Madras and another (1986) I LLN 405. Hence, we could not find any substance in this line of argument on the part of the learned counsel for the management. In the said circumstances, W.A.No.1058 of 1983 deserves dismissal."

12. The decision cited by the learned counsel for the respondents 1 to 5 reported in (2003) 6 SCC 528 (Bharat Heavy Electricals Ltd. v. State of U.P.) fully supports the case of the respondents 1 to 5, wherein in paragraphs 12 and 13, the Honourable Supreme Court held thus,

"12. The learned counsel for the appellant wanted to take support from the Constitution Bench judgment of this Court in Steel Authority of India Ltd. v. National Union Waterfront Workers. For that purpose, he took us through paras 107 to 116. In the said judgment, the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 came up for

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

consideration and interpretation. After detailed analysis of the provisions and consideration of various decisions, in para 107 contract labours were classified in three categories. In paras 108-16, the issue whether on a contractor engaging contract labour in connection with the work entrusted to him by a principal employer, the relationship of master and servant between him (the principal employer) and the contract labour emerges. An extreme stand was taken by learned Senior Counsel in that case that the engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. In dealing with the said contention, various earlier cases decided by this Court were referred to including the case of Hussainbhai. The extreme contention was rejected. From the perusal of paras 107-16, it is clear whether a workman is an employee of the principal employer or not depends on the facts and circumstances of a given case. The case of Hussainbhai1 is neither dissented from nor diluted. On the other hand, it is held that the said case is covered by clause (ii) of para 107 which reads: (SCC p. 56)

> 107. ... (ii) where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited;

13. This apart, the finding that the respondent workmen were the employees of the appellant, does not rest merely on the test of control. The other evidence and facts and circumstances of the case were also kept in mind in recording such a finding including a vital fact that the appellant did not produce the records alleging that they were not available which led to drawing adverse inference against

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

them. It is not possible for us to hold that such concurrent findings recorded by the Labour Court and the High Court that the workmen were to be treated as the employees of the appellant are either perverse or based on no evidence or untenable at all."

13. From the decisions referred above, we are of the view that the learned single Judge is justified in analysing the oral and documentary evidence to arrive at the just decision to avert miscarriage of justice.

14. We are in entire agreement with the findings of the learned single Judge and we are also of the view that the alleged contract is only sham and not genuine. Hence we are not inclined to interfere with the said factual findings of the learned single Judge. As held by the learned single Judge, the appellant institution is maintained by the Society, which also runs other educational institutions and therefore accommodating the respondents 1 to 5 as Security Guards will not cause any hardship to the appellant. Therefore, we direct the appellant to reinstate the respondents 1 to 5 as ordered by the learned single Judge within one month from today.

15. There is no merit in the writ appeal and consequently the same is dismissed No cost.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

vr

To

1. The Presiding Officer, Labour Court, Salem.

2. The Management of Institute of
Road Transport Technology, Erode.

1 cc to Mr.D. Hariparanthaman, Advocate, Sr,. 6508
2 ccs to Mr.L.G. Sahadevan, Advocate, Sr. 6131

W.A.No.3570 of 2003

TS (CO)
kk 8/2

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/